

LETTER OPINION
99-L-11

January 19, 1999

The Honorable Steve W. Tomac
State Senator
2498 59th St
St. Anthony, ND 58566-9640

Dear Senator Tomac:

Thank you for your letter asking whether massage provided by clubs other than YMCA clubs is exempt from regulation by the State Board of Massage under N.D.C.C. § 43-25-04.

Subsection 4 of N.D.C.C. § 43-25-04 provides that "schools and YMCA clubs who furnish therapy and massage services to their players and members" are exempt from regulation under chapter 43-25. Your letter indicates that some massage therapists question whether this exemption includes clubs and fraternal organizations other than YMCA clubs.

When interpreting a statute, one must first look to the plain meaning of the words that are used. Adams County Record v. Greater North Dakota Ass'n, 529 N.W.2d 830, 833 (N.D. 1995); Burlington Northern v. State, 500 N.W.2d 615, 617 (N.D. 1993). If the plain language of a statute is clear and unambiguous, the letter of the statute may not be disregarded under the pretext of pursuing its spirit. Id.; N.D.C.C. § 1-02-05.

Here, the language of N.D.C.C. § 43-25-04(4) is clear and unambiguous: the exemption applies only to "schools" and "YMCA clubs." There is no punctuation between the words "YMCA" and "clubs" which would suggest that the terms should be interpreted separately. Thus, it is my opinion that the plain language of the exemption in N.D.C.C. § 43-25-04(4) does not extend to fitness clubs, athletic clubs, and similar organizations.

This conclusion is supported by the legislative history of N.D.C.C. § 43-25-04. In 1983 the Legislative Assembly passed House Bill 1535, which amended subsection 4 of N.D.C.C. § 43-25-04. See 1983 Sess.

The Honorable Steve W. Tomac
January 19, 1999
Page2

Laws ch. 486, § 3. Prior to the 1983 amendments, N.D.C.C. § 43-25-04(4) exempted the following classes of persons from regulation under N.D.C.C. ch. 43-25:

Schools, Y.M.C.A clubs, athletic clubs, and similar organizations who furnish therapy and massage services to their players and members.

As introduced, House Bill 1535 would have deleted all of the above exemption. However, the bill was amended by a committee of the House of Representatives to continue the exemption for schools and YMCA clubs, but to exclude from the exemption athletic clubs and similar organizations. See Hearing on H. 1535 Before the House Comm. on Social Services and Veterans' Affairs, 48th N.D. Leg. (February 10, 1983) (committee minutes). House Bill 1535 was passed as amended. Thus, it is clear from both the plain language of the statute and its legislative history that the exemption in N.D.C.C. § 43-25-04(4) does not include athletic clubs and similar organizations.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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